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November 20, 2014

**VIA FEDERAL EXPRESS**

Nanette L. Wesley  
Wesley Holladay, LLC  
2974 Lookout Place NE  
Atlanta, Georgia 30305

Re: Claimants : Justin C. Nelson  
Docket No.: 24142-1  
**Our File : 719,424**

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Dear Mr. Wesley:

On November 17, 2014, we received a Summons and Complaint on behalf of Certain Underwriters at Lloyd's in regard to the above referenced matter.

Very truly yours,

MENDES & MOUNT, LLP

A handwritten signature in cursive script, appearing to read 'Barbara Demosthene'.

Barbara Demosthene

Enclosure

719429



GILBERT | RUSSELL | MCWHERTER  
SCOTT | BOBBITT PLC

341 Cool Springs Boulevard, Suite 130 • Franklin, TN 37057 • 615.354.1124 (TX)

RECEIVED

NOV 17 2014

Mendes & Mount, LLP  
Answered

FILE

November 11, 2014

*Via Certified Mail/Return Receipt*

Underwriters at Lloyd's, London  
c/o Mendes & Mount, LLP  
750 Seventh Avenue  
New York, NY 10019-6829

Re: Justin Nelson v Underwriters at Lloyd's, London  
Our File No. 2726-1

To Whom It May Concern:

Enclosed, please find a Summons that was issued by the Circuit Court of Jefferson County, Tennessee, along with a copy of the Complaint that has been filed with regard to the above referenced matter.

Should you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,

GILBERT RUSSELL MCWHERTER  
SCOTT BOBBITT PLC

J. Brandon McWherter

JBM:lb  
Enclosures

CHATTANOOGA OFFICE: 100 W. Martin Luther King Blvd., Suite 504 • Chattanooga, TN 37402 • 423.459.5044 (TX)

MEMPHIS OFFICE: 6000 Poplar Ave., Suite 250 • Memphis, TN 38119 • 901.766.1668 (TX)

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Jefferson County Circuit Court	<b>STATE OF TENNESSEE</b> <b>CIVIL SUMMONS</b> page 1 of 1	Case Number <b>24142-71</b>
<b>JUSTIN C. NELSON</b> Vs. <b>UNDERWRITERS AT LLOYD'S, LONDON</b>		

Served On:

Underwriters at Lloyd's, c/o Mendes & Munn, LLP  
London  
750 Seventh Avenue  
New York, New York 10019-6829

You are hereby summoned to defend a civil action filed against you in Circuit Court, Jefferson County, Tennessee. You must be made within thirty (30) days from the date this summons is served upon you. You are directed to file your answer with the court and send a copy to the plaintiff's attorney at the address listed below. If you fail to defend this action by the below date, a judgment may be rendered against you for the relief sought in the complaint.

Issued November 6, 2014

Clerk Deputy Clerk

Attorney for Plaintiff J. Brandon McWhorter, (615) 351-1111  
311 Cool Springs Blvd., Suite 230, Franklin TN 37067

### NOTICE OF PERSONAL PROPERTY EXEMPTION

TO THE DEFENDANT(S): Tennessee law provides a ten thousand dollar (\$10,000) personal property exemption as well as a homestead exemption from execution or seizure to satisfy a judgment. The amount of the homestead exemption depends upon your age and the other factors which are listed in TCA § 26-2-301. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary, however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed: these include items of necessary wearing apparel (clothing) for your self and your family and trunks or other receptacles necessary to contain such apparel; family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer. Please state file number on list.

Mail list to \_\_\_\_\_

Clerk \_\_\_\_\_

County \_\_\_\_\_

### CERTIFICATION (IF APPLICABLE)

I, \_\_\_\_\_ Clerk of \_\_\_\_\_ County do certify this to be a true and correct copy of the original summons issued in this case.

Date: \_\_\_\_\_

Clerk Deputy Clerk

**OFFICER'S RETURN:** Please execute this summons and make your return within ninety (90) days of issuance as provided by law.

I certify that I have served this summons together with the complaint as follows: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_  
 Officer, Title

**RETURN ON SERVICE OF SUMMONS BY MAIL:** I hereby certify and return that on \_\_\_\_\_, I sent postage

prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in the above styled case, to the defendant \_\_\_\_\_

On \_\_\_\_\_

I received the return receipt, which had been signed by \_\_\_\_\_

on \_\_\_\_\_

The return receipt is attached to this original summons to be filed by the Court Clerk.

Date: \_\_\_\_\_

Notary Public Deputy Clerk (Comm. Expires \_\_\_\_\_)

Signature of Plaintiff \_\_\_\_\_

Plaintiff's Attorney (or Person Authorized to Serve Process)  
 (Attach return receipt on back)

DD: If you need assistance or accommodations because of a disability, please call \_\_\_\_\_

DD: Coordinator at \_\_\_\_\_

RC 0411

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, TENNESSEE

JUSTIN C. NELSON,

Plaintiff,

v.

UNDERWRITERS AT LLOYD'S,  
LONDON

Defendant.

COMPLAINT

COMES NOW the Plaintiff, Justin C. Nelson, by and through counsel, and submits the following for his Complaint against Underwriters at Lloyd's, London:

PARTIES AND JURISDICTION

1. Justin C. Nelson (hereafter "Plaintiff") is a resident of Jefferson County, Tennessee. At all times relevant hereto, Plaintiff was the owner of the real estate, dwelling, other structures, and personal property located at 1321 West Old A J Highway, New Market, Jefferson County, Tennessee (the "Insured Premises").

2. Defendant, Underwriters at Lloyd's, London (hereafter "Underwriters") is an insurance company engaged in the insurance business in the State of Tennessee, including Jefferson County. Underwriters is not admitted as an insurance company authorized to issue insurance policies in the State of Tennessee except as it may have been allowed to issue policies pursuant to the Surplus Lines Act. Upon information and belief, Underwriters is a foreign company situated in the United Kingdom. Pursuant to the insurance policy at issue, Underwriters has agreed to submit to the jurisdiction of this Court, and has further agreed that

service of process may be made on it by service on Mendes & Mount, LLP, 750 Seventh Ave., New York, New York 10019-6829. The insurance policy at issue does not delineate any specific companies or syndicates who served as underwriters for the subject policy, but rather only identifies "Underwriters at Lloyd's, London" as the insurer.

3. This Complaint originates as the result of a fire that substantially and/or totally damaged or destroyed the structure and personal property located on the Insured Premises.

### FACTS

4. At all times relevant hereto, Plaintiff was a party to an insurance contract whereby Underwriters agreed to insure the dwelling, other structures, and personal property located at the Insured Premises against property damage, upon information and belief bearing Policy No. AVAC046891 (the "Policy"). The Policy's term was June 21, 2013 to September 21, 2013. The Policy is incorporated herein by reference as if set forth verbatim.

5. At all times relevant hereto, the Insured Premises consisted of a residential dwelling and surrounding area.

6. The Policy provided insurance coverage for direct physical loss to the dwelling located on the Insured Premises, as well as coverage for damage to personal property resulting from direct physical losses. The Policy also provided coverage for debris removal and such other insurance coverage as specifically set forth in the Policy.

7. The Declarations page of the Policy reveals that coverage was provided in the face amount of \$125,000 for the dwelling located on the Insured Premises.

8. The Policy was an "all-risks" policy, meaning that the Policy covered all risks of accidental direct physical loss except for those specifically excluded by the Policy.

9. Pursuant to the Policy, Plaintiff paid a premium to Underwriters in exchange for insurance coverage. Plaintiff paid the required premiums at all times relevant to this Complaint.

10. On or about September 18, 2013, an accidental fire damaged and or destroyed the dwelling and personal property located on the Insured Premises, resulting in a total loss (the "Loss").

11. Plaintiff promptly reported the Loss to Underwriters.

12. Plaintiff fulfilled all of the duties before and after the Loss that were imposed upon him by the Policy to the satisfaction of Underwriters.

13. As it relates to the Loss, there is no applicable exclusion. The Loss is a compensable claim under the Policy.

14. Despite the fact that Plaintiff has fulfilled all duties imposed upon him by Underwriters and is at no fault in this matter, Underwriters has wrongfully refused to pay Plaintiff's claim for insurance proceeds. Underwriters has delayed payment of Plaintiff's claim solely for the purpose of protecting its own financial interest.

15. Underwriters' failure and refusal to pay Plaintiff the amounts owed to him for the Loss is without justification.

16. Underwriters' failure and refusal to pay the money and benefits due and owing Plaintiff under the Policy has caused Plaintiff to seek legal counsel and to initiate this Complaint to recover the insurance proceeds to which he is entitled.

### **CAUSES OF ACTION**

#### **Count 1 – Breach of Contract (against Underwriters)**

17. The allegations contained in Paragraphs 1-16 of this Complaint are incorporated herein by reference as if set forth verbatim.

18. The Policy issued by Underwriters was a binding contract, and is supported by valid consideration.

19. Underwriters is in total material breach of the Policy, and Underwriters is liable to Plaintiff in the maximum amount allowed by the Policy for the Loss. Specifically, Underwriters' breach of contract includes the following, without limitation: (a) Underwriters' failure and refusal to pay the amounts owed to Plaintiff for the damage to the dwelling on the Insured Premises caused by the Loss; (b) Underwriters' failure and refusal to pay all amounts owed to Plaintiff for the costs of debris removal associated with the Loss; and (c) Underwriters' failure and refusal to pay such other amounts to Plaintiff as may be required by the Policy.

20. As a result of Underwriters' breach of contract, Plaintiff has sustained substantial compensable losses for the amounts claimed under the Policy.

21. Underwriters is liable to Plaintiff for his losses.

22. Underwriters' breach of contract was intentional, fraudulent, malicious, and or reckless, therefore justifying an award of punitive damages. *See, e.g., Riad v. Erie Inv. Exchange*, 2013 Tenn. App. LEXIS 712, \*47 (Tenn. Ct. App. Oct. 31, 2013). Specifically, Underwriters intentionally, fraudulently, maliciously, and/or recklessly: (1) failed to effectuate a prompt and fair settlement of Plaintiff's claim when liability was clear; (2) refused and failed to conduct a reasonable, prompt, and fair investigation concerning the issues surrounding Plaintiff's claim for insurance proceeds; (3) unjustly refused and/or failed to pay Plaintiff's claim for its own financial preservation with no reasonable or justifiable basis; (4) implied that Plaintiff was guilty of insurance fraud without any credible evidence to support such an allegation; (5) failed to make a prompt decision on Plaintiff's claim, even through the date of the filing of this lawsuit more than a year after the Loss; (6) failed to fully inform Plaintiff of his rights and obligations

under the Policy; (7) failed and refused to conduct a reasonable investigation based on all available information; (8) failed to acknowledge communications from Plaintiff and failed to act reasonably and promptly upon such communications; (9) engaged in acts and practices toward Plaintiff that amount to acts of baseness, vileness, and/or depravity that are contrary to the good faith duties owed to Plaintiff; (10) failed to pay all amounts due and owing under the Policy with no reasonable or justifiable basis; and (11) offered substantially less than the amount actually owed in an effort to deprive Plaintiff of his rights under the Policy. Underwriters knew, or reasonably should have known, that Plaintiff was justifiably relying on the money and benefits due him under the terms of the Policy. Nevertheless, acting with conscious disregard for Plaintiff's rights and with the intention of causing or willfully disregarding the probability of causing unjust and cruel hardship on Plaintiff, Underwriters consciously ignored Plaintiff's valid claim and then denied Plaintiff's claim and withheld monies and benefits rightfully due Plaintiff. Plaintiff seeks, and is entitled to, punitive damages.

WHEREFORE, as a result of the foregoing, Plaintiff would respectfully request that this Honorable Court award a judgment against Underwriters as follows:

- A. For compensatory damages to Plaintiff against Underwriters not to exceed \$175,000;
- B. For punitive damages against Underwriters not to exceed \$1,400,000.00;
- C. For all costs incurred by Plaintiff as a result of this action;
- D. For pre- and post-judgment interest; and
- E. For such other further and general relief as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff demands a jury.



Respectfully submitted,

GILBERT RUSSELL McWHERTER  
SCOTT & BOBBITT, PLLC



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Telephone: (731) 664-1340  
Facsimile: (731) 664-1540

COST BOND

This firm stands as surety for costs in this cause.

